

STATE OF MAINE
DEPARTMENT OF MARINE
RESOURCES

Experimental Aquaculture Lease Application
Suspended-Culture of American/Eastern
Oysters
Damariscotta River, South Bristol, Lincoln
County

Norumbega Oyster Inc.

DAM Mix

July 29, 2021

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION

Norumbega Oyster, Inc. applied to the Department of Marine Resources (DMR) for a three-year experimental aquaculture lease located south of Merry Island, along the eastern shore of the Damariscotta River in South Bristol, Lincoln County, Maine. The proposed lease is 3.95¹ acres and is for the suspended culture of American/eastern oysters (*Crassostrea virginica*). DMR accepted the application as complete on December 17, 2020.

1. THE PROCEEDINGS

Notice of the application and the 30-day public comment period were provided to riparian landowners within 1,000 feet of the proposed site, state and federal agencies, the Town of South Bristol and its Harbormaster, and others on DMR's mailing list. Notice of the application and comment period was published in the January 7, 2021 edition of *The Lincoln County News*. During the comment period, DMR received no requests for a public hearing and no hearing was held. The evidentiary record regarding this lease application includes the application, DMR's site report dated July 8, 2021, and the case file. The evidence from each of these sources is summarized below.²

2. DESCRIPTION OF THE PROJECT

A. Proposed Operations

The applicant proposes to culture American oysters using a combination of 4-pack and 6-pack oyster grow cages. Cages would be arranged along thirty lines, which would be grouped in sets of 10 (App 13). Up to thirty 4-pack cages (36"x40.5"x9") or up to twenty-five 6-pack cages (40.5"x68"x9") would be deployed on each line. If only 4-pack cages are used, a maximum of

¹ Applicant requested 3.96 acres. DMR calculations indicate the area is 3.95 acres.

² These sources are cited, with page references, as CF (case file), App (Application), SR (site report).

900 cages would be deployed on the site, and if only 6-pack cages are used a maximum of 750 cages would be deployed on the site (App 13). Throughout the year, the applicant proposes to use hydraulic lifting equipment for harvesting and maintenance 1-2 days per week. Between April and October, the equipment will be used for general cage maintenance, and November-May it will be used for harvesting of product. Sorting tumblers and a wash down pump, powered by a 3-5 horsepower gasoline engine, are proposed for use 1-2 days per week April-October (App 7). Gear would remain on-site year-round, but approximately half of the cages would be sunk to the bottom in November for overwintering. The remainder of the gear would remain on the surface year-round. Cages sunk in the winter would be brought back to the surface in April (App 6).

B. Site Characteristics

DMR scientists conducted a site visit of the proposed lease area on April 29, 2021 and returned to the site on June 23, 2021 (SR 2). The proposed lease site is in subtidal waters south of Merry Island, along the eastern shore of the Damariscotta River (SR 2). The adjacent shoreline is rocky and leads to mixed forest (SR 2). During the April 29, 2021 site visit depths at the corners of the proposed site ranged from 21.4 to 34.5 feet during their visit. Correcting for tidal variation derives depths approximately 6.2 feet higher at the nearest high tide, and approximately 4.5 feet lower at mean low water (SR 5). The bottom of the lease site is composed of semi-firm mud (SR 6), and during DMR's site visit they observed detached marine algae within the site (SR 12).

According to the site report, from the proposed eastern boundary to the nearest point on the eastern shoreline of the Damariscotta River there are approximately 60 feet, and from the proposed northwest corner to the western shoreline of the river there are approximately 1,475 feet (SR 6).

3. STATUTORY CRITERIA & FINDINGS OF FACT

Approval of experimental aquaculture leases is governed by 12 M.R.S.A. §6072-A. This statute provides that a lease may be granted by the Commissioner of DMR upon determining that the project will not unreasonably interfere with the ingress and egress of riparian owners; with navigation; with fishing or other water related uses of the area, taking into consideration other aquaculture uses in the area; with the ability of the lease site and surrounding areas to support existing ecologically significant flora and fauna; or with the public use or enjoyment within 1,000 feet of beaches, parks, or docking facilities owned by municipal, state, or federal

governments. The Commissioner must also determine that the applicant has demonstrated that there is an available source of organisms to be cultured on the lease site.

A. Riparian Access

The proposed lease is located along the eastern shoreline of the Damariscotta River, south of Merry Island (SR 7). At mean low water, there is at least 60 feet between the eastern boundary of the proposed lease and the Damariscotta River shoreline (SR 7). During DMR's visit to the site, no houses, docks, or moorings were observed along the shoreline to the immediate east of the proposed lease area. During DMR's April 2021 visit to the site, a hauled-out ramp was observed south of the proposal, and two piers were observed to the north, the closest of which was approximately 750 feet away. During DMR's visit to the site in June 2021, a ramp and float were installed on the pier furthest away, and motorized vessels were observed moored nearby (SR 7). No public comments were received regarding riparian ingress and egress, and DMR's site report indicates that given the distances observed between the existing riparian infrastructure, it appears there is adequate room for riparian owners to access these points (SR 7). A Harbormaster Questionnaire was sent to the South Bristol Harbormaster, and in their review of the proposal they indicated that the proposed lease should not affect riparian owners from accessing their properties and that the proposal appears to be far enough from the shore³.

Because DMR did not receive any comments regarding riparian access, and considering the evidence presented in DMR's site report as well as the information contained within the submitted Harbormaster Questionnaire, it is reasonable to conclude that there are no concerns regarding the effects the proposed lease may have on riparian ingress and egress.

Therefore, the aquaculture activities proposed for this site will not unreasonably interfere with the ingress and egress of any riparian owner.

B. Navigation

The proposal is located along the eastern shore of the Damariscotta River and is over 1,400 feet from the western shore of the river. A marked navigation channel within the Damariscotta River lies to the west of the proposed lease site and is used by both recreational and commercial mariners (SR 9). The applicant indicated that there is heavy traffic in this channel during the summer months, and that the channel lies about 600 feet west of the

³ CF: Harbormaster Questionnaire submitted by Cecil Burnham on Jan 17, 2021.

proposal (App 8). DMR's site report states that the NOAA Chart shows that the majority of the distance between the proposal and the river's western shore is at least 30 feet deep at mean low water, and therefore there should be adequate room for vessels navigating north and south within the river (SR 9). In their review of the application, the South Bristol Harbormaster indicated that the proposal "is out of the way of the channel and should not interfere with navigation".⁴ DMR's site report also notes that because there is at least 60 feet between the proposal and the eastern shoreline of the river, there should be adequate room for depth appropriate vessels to move between the proposal and the eastern shoreline (SR 9).

During the comment period, DMR did not receive any comments related to navigation within the Damariscotta River or near the proposal. Based on the lack of public comments, the evidence in the site report, and information from the South Bristol Harbormaster, it is reasonable to conclude that navigation in the area will not be unduly affected by the proposed application.

Therefore, the aquaculture activities proposed for this site will not unreasonably interfere with navigation.

C. Fishing & Other Uses

Fishing. During DMR's site visit on April 29, 2021, no commercial or recreational fishing was observed within the boundaries of the proposed lease site. The only fishing activity observed was two lobster buoys, about 165 feet south of the proposal (SR 9). DMR staff visited the site again on June 23, 2021 and noted heavy lobstering activity in the Damariscotta River channel, over 550 feet to the west of the proposed lease (SR 10). Only light lobstering was observed closer to the proposal, and no lobster buoys were observed within the boundaries of the proposal (SR 10). The application indicated that commercial lobstering occurs within the channel April through December and that most of this activity is at least 400 feet away from the proposed lease (App 7).

The application indicated that recreational fishing does not occur within the proposed lease boundaries, however DMR's site report stated that while not observed by DMR during the site visits, recreational hook and line fishing for striped bass is known to occur within the river, often close to shore and in less than 20-feet of water (SR 10).

⁴ CF: Harbormaster Questionnaire submitted by Cecil Burnham on Jan 17, 2021.

In their review of the application, the South Bristol Harbormaster indicated that there would be very little impact on commercial or recreational fishing.⁵

No comments were received regarding any commercial or recreational fishing in the area during the comment period.

Based on the lack of public comments, and the evidence in the record, it is reasonable to conclude that the proposed aquaculture activities will not unreasonably interfere with fishing.

Exclusivity. The applicant has requested that commercial lobster fishing not be permitted within the proposed lease boundaries.

Other aquaculture uses. There are 5 Limited Purpose Aquaculture (LPA) licenses and 1 aquaculture lease within 1 mile of the proposal. The closest aquaculture activity to the proposal is an LPA located within the proposed lease boundaries, which is held by one of the owners of Norumbega Oyster, Inc. Should the lease be approved, this LPA will be terminated (App 9). The closest aquaculture activity not associated with Norumbega Oyster, Inc., is LPA CREA421, which is 2,460 feet to the northeast (SR 10).

Other water-related uses. During the review period, DMR did not receive any comments detailing other water-related uses that are not already contemplated in other sections of this decision. Based on the absence of public comments, it is reasonable to conclude that there are no concerns regarding the effects the proposed lease may have on other water-related uses of the area.

Therefore, considering the other aquaculture uses of the area, the activities proposed for this site will not unreasonably interfere with fishing or other water-related uses of the area.

D. Flora & Fauna

Historical eelgrass (*Zostera marina*) data collected in 2005 by the Maine Department of Marine Resources indicate that the closest mapped eelgrass beds to the proposed site were located 1,680 feet to the southwest (SR 12). No eelgrass was observed by DMR during the underwater assessment of the site on April 29, 2021 (SR 12).

According to data maintained by the Maine Department of Inland Fisheries and Wildlife (MDIFW), the proposed lease is located over 1,600 feet from the nearest Tidal Wading Bird and Waterfowl Habitat, which is defined as significant wildlife habitat by Maine's Natural Resource Protection Act (SR 11). The nearest bald eagle nest buffer is over 3,000 feet away from the proposal (SR11). During the review period for this application, DMR sent the

⁵ CF: Harbormaster Questionnaire submitted by Cecil Burnham on Jan 17, 2021.

application to the MDIFW for their review and comment, and they indicated that “minimal impacts to wildlife are anticipated for this project.”⁶

No public comments were received regarding the flora and fauna in the area. Based on the evidence that the proposed lease does not interfere with significant wildlife, and because no other comments were received regarding the flora and fauna in the area, it appears that the proposed aquaculture activities for this lease site will not interfere with the ecological functioning of the area.

Therefore, the aquaculture activities proposed for this site will not unreasonably interfere with the ability of the lease site and surrounding areas to support existing ecologically significant flora and fauna.

E. Public Use & Enjoyment

There are no beaches, parks, or docking facilities owned by municipal, state, or federal government within 1,000 feet of the proposed lease site.

Therefore, the aquaculture activities proposed for this site will not unreasonably interfere with public use or enjoyment within 1,000 feet of beaches, parks, or docking facilities owned by federal, state, or municipal governments.

F. Source of Organisms

The applicant intends to source American/eastern oysters from Muscongus Bay Aquaculture, which is an approved source by DMR.

Therefore, the applicant has demonstrated that there is available source of stock to be cultured for the lease site.

4. CONCLUSIONS OF LAW

Based on the above findings, I conclude that:

1. The aquaculture activities proposed for this site will not unreasonably interfere with the ingress and egress of any riparian owner.
2. The aquaculture activities proposed for this site will not unreasonably interfere with navigation.

⁶ CF: Email from R. Settele to C. Burke on January 8, 2021.

3. The aquaculture activities proposed for this site will not unreasonably interfere with fishing or other uses of the area, taking into consideration the number and density of aquaculture leases in the area.

4. The aquaculture activities proposed for this site will not unreasonably interfere with the ability of the lease site and surrounding areas to support existing ecologically significant flora and fauna.

5. The aquaculture activities proposed for this site will not unreasonably interfere with the public use or enjoyment within 1,000 feet of beaches, parks, or docking facilities owned by municipal, state, or federal governments.

6. The applicant has demonstrated that there is an available source of stock to be cultured for the lease site.

Accordingly, the evidence in the record supports the conclusion that the proposed aquaculture activities meet the requirements for the granting of an aquaculture lease set forth in 12 M.R.S.A. §6072-A.

5. DECISION

Based on the foregoing, the Commissioner grants an experimental lease of 3.95 acres to Norumbega Oyster, Inc. for three years, the term of the lease to begin within twelve months of the date of this decision, on a date chosen by the lessee;⁷ however, no aquaculture rights shall accrue in the lease area until the lease is fully executed. This lease is granted to the lessee for the cultivation of American/eastern oysters (*Crassostrea virginica*). The lessee shall pay the State of Maine rent in the amount of \$100.00 per acre per year. Since this is an experimental lease with more than 400 sq. ft. of structures and no discharge, a bond or escrow account is required. The lessee shall post a bond or establish an escrow account pursuant to DMR Rule 2.64 (12)(B) in the amount of \$5,000.00, conditioned upon performance of the obligations contained in the aquaculture lease documents and all applicable statutes and regulations.

6. CONDITIONS TO BE IMPOSED ON LEASE

⁷ DMR Rule 2.64 (14) provides:

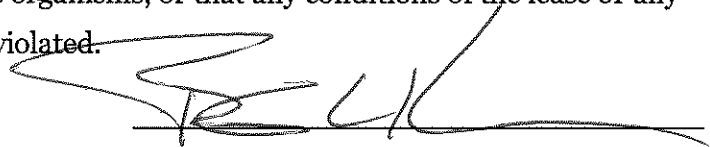
“The term of the lease shall begin within 12 months of the Commissioner’s decision, on a date chosen by the applicant. No aquaculture rights shall accrue in the lease area until the lease term begins and the lease is signed.”

The Commissioner may establish conditions that govern the use of the lease area and impose limitations on aquaculture activities, pursuant to 12 MSRA §6072-A (15)⁸. Conditions are designed to encourage the greatest multiple compatible uses of the lease area, while preserving the exclusive rights of the lessee to the extent necessary to carry out the purpose of the lease. No conditions have been imposed on this lease.

7. REVOCATION OF EXPERIMENTAL LEASE

The Commissioner may commence revocation procedures upon determining pursuant to 12 MRSA §6072-A (22) and DMR Rule Chapter 2.64 (13) that no substantial research has been conducted on the site within the preceding year, that research has been conducted in a manner injurious to the environment or to marine organisms, or that any conditions of the lease or any applicable laws or regulations have been violated.

Dated: 7/29/2021



Patrick C. Keliher, Commissioner

Department of Marine Resources

⁸ 12 MRSA §6072-A (15) provides that:

“The commissioner may establish conditions that govern the use of the leased area and limitations on the aquaculture activities. These conditions must encourage the greatest multiple, compatible uses of the leased area, but must also address the ability of the lease site and surrounding area to support ecologically significant flora and fauna and preserve the exclusive rights of the lessee to the extent necessary to carry out the lease purpose. The commissioner may grant the lease on a conditional basis until the lessee has acquired all the necessary federal, state and local permits.”